



Capital Power Generation Services Inc.

Genesee Generating Station Units 4 and 5

August 12, 2014

The Alberta Utilities Commission

Decision 2014-226: Capital Power Generation Services Inc.

Genesee Generating Station Units 4 and 5

Application No. 1610202

Proceeding No. 2996

August 12, 2014

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1 Introduction

1. In this decision, the Alberta Utilities Commission (AUC or the Commission) must decide whether to approve an application by Capital Power Generation Services Inc. (the applicant or Capital Power) for construction and operation of two natural gas-fired generation units pursuant to Section 11 of the Hydro and Electric Energy Act. The two proposed units, to be designated as Genesee generating station units 4 and 5 (the proposed power plant or the project), would have a total capability of 1,050 megawatts (MW) and would be located on a brownfield site adjacent to the existing Genesee generating station, approximately 30 kilometres southwest of Stony Plain, Alberta. Capital Power proposed this project to meet expected increases in Alberta's power requirements arising from continued economic growth, and from the expected retirements of existing coal generating units 1, 2 and 3. This application was registered on December 20, 2013 as Application No. 1610202 under Proceeding No. 2996.

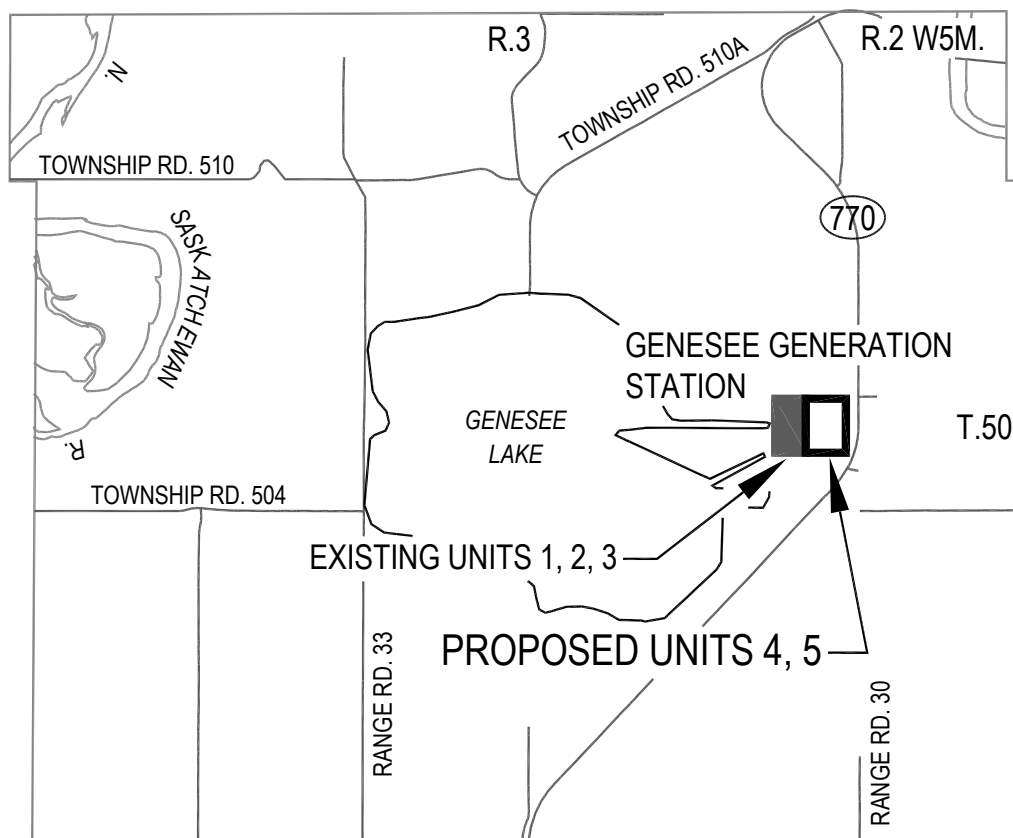
2 Background

2.1 Proposed power plant application

2. Capital Power presently owns and operates the existing Genesee generating station, comprised of three coal-fired generation units located in the Stony Plain area. Generation units 1, 2 and 3 are rated at 430 MW, 430 MW and 516 MW respectively, for a total capability of 1,376 MW.

3. If approved, the project would be constructed on a previously disturbed (brownfield) site, adjacent to the existing Genesee generating units 1, 2 and 3, located in the southeast quarter of Section 25, Township 50, Range 3, west of the Fifth Meridian.

4. The locations of the existing Genesee generation units 1, 2 and 3, and the proposed Genesee generation units 4 and 5 are shown in Figure 1 below:

Figure 1 - Genesee generating station existing units 1, 2 and 3, and proposed units 4 and 5

5. The Commission issued a notice of application on March 4, 2014 for Proceeding No. 2996. In the notice of application, the Commission directed any person who had concerns about or objections to the application, or who wished to support the application, to file a submission by March 28, 2014. The Commission extended the deadline for submissions to April 28, 2014 to give parties who had not received the original notice of application an opportunity to file submissions.

6. The Commission received seven submissions in response to the notice of application. Of these submissions, five were objections from the following parties:

- Darren Savard;
- Kimberly Savard;
- The Strawberry Landowners Air and Water Group which is comprised of the following individual members: Christopher Irish, Marc and Lorelei McLeod, Brian Staszewski, Ryan Morton,¹ Gerald Gwodz, Norman and Arlene Heitzman, Brenda and Garwin Baynes, and Donna and Walter Bukkems;
- the Gunn Métis Local 55 (Gunn Métis); and

¹ Exhibit No. 37.01, Strawberry Landowners Air and Water Group Rule 001 Section 24 response to notice, March 28, 2013, Ryan Morton was included as a member of the Strawberry Landowners Air and Water Group however his name was not listed in the Exhibit No. 49.01, SLAWG ESRD Statement of Concern dated April 28, 2014.

- the Pembina Institute.

7. The Commission also received a letter of support from Terry and Elaine Aronyk,² and a letter of support from EPCOR Distribution & Transmission Inc. (EPCOR).³

8. On April 23, 2014, the Gunn Métis filed a motion with the AUC under Section 13 of AUC Rule 001: *Rules of Practice* requesting confidential treatment of a map identifying aboriginal harvesting locations in the vicinity of the proposed project and an affidavit of one of its members that the Gunn Métis wished to provide in support of its statement of intent to participate.

9. The Commission wrote to Capital Power on April 15, 2014,⁴ and afforded it with an opportunity to comment upon the standing of those persons who filed submissions on the record of Proceeding No. 2996. On May 2, 2014,⁵ Capital Power submitted that no party who had filed a statement of intent to participate met the standing test articulated in Section 9 of the *Alberta Utilities Commission Act*.

10. In its May 26, 2014 ruling, the Commission granted the request for confidential treatment of the map and denied the Gunn Métis' request to submit an affidavit of one of its members on a confidential basis. A copy of the Commission's ruling on this motion is attached as [Appendix A](#).

11. On June 13, 2014, the Commission issued its ruling on standing. In that ruling, the Commission found that none of the parties who had filed a statement of intent to participate had demonstrated, on a factual basis, that the Commission's decision on the proposed power plant application may directly and adversely affect their rights and interests. Therefore, the Commission considered that a hearing was not required pursuant to Section 9 of the *Alberta Utilities Commission Act*. A copy of the Commission's ruling on standing is attached as [Appendix B](#).

3 Role and authority of the Commission

12. The Commission is responsible for regulating the construction and operation of power plants in Alberta. Section 11 of the *Hydro and Electric Energy Act* states that no person shall construct or operate a power plant without prior approval from the Commission.

13. When considering an application for a power plant, the Commission is guided by sections 2 and 3 of the *Hydro and Electric Energy Act*, and Section 17 of the *Alberta Utilities Commission Act*.

² Exhibit No. 0032.01.ARONYK-2996, Aronyk Statement of Intent to Participate.

³ Exhibit No. 0030.01.EDTI-2996, EDTI Statement of Intent to Participate.

⁴ Exhibit No. 0043.01.AUC-2996, AUC Letter to Capital Power.

⁵ Exhibit No. 0054.01.EPGSI-2996 and Exhibit 0055.01.EPGSI-2996, Capital Power letter to the AUC re: standing.

14. Section 2 lists the purposes of the *Hydro and Electric Energy Act* in the generation of electric energy. Those purposes include:

- to provide for the economic, orderly and efficient development and operation, in the public interest, of the generation of electric energy in Alberta;
- to secure the observance of safe and efficient practices in the public interest in the generation of electric energy in Alberta; and
- to assist the government in controlling pollution and ensuring environment conservation in the generation of electric energy in Alberta.

15. Section 3 of the *Hydro and Electric Energy Act* requires the Commission to have regard for the purposes of the *Electric Utilities Act* when assessing whether a proposed power plant is in the public interest. The purposes of the *Electric Utilities Act* include the development of an efficient electric industry structure and the development of an electric generation sector guided by competitive market forces.⁶

16. In Alberta, the legislature expressed its clear intention that electric generation is to be developed through the mechanism of a competitive, deregulated electric generation market. Section 3 of the *Hydro and Electric Energy Act* further directs that the Commission shall not have regard to whether a proposed power plant “is an economic source of electric energy in Alberta or to whether there is a need for the electric energy to be produced by such a facility in meeting the requirements for electric energy in Alberta or outside Alberta.” Accordingly, in considering a power plant application before it, the Commission does not take into account a potential project’s cost or whether there is a need for the electric energy that will be produced by the project.⁷

17. As such, in the following assessment of whether the project is in the public interest, the Commission has not had regard to whether there is a need for the project as proposed by Capital Power. In considering this application, the Commission is also mindful of Section 19 of the *Hydro and Electric Energy Act*, which authorizes the Commission to approve an application, approve it with conditions, or deny it. The Commission’s public interest mandate is found in Section 17 of the *Alberta Utilities Commission Act*, which states:

17(1) Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether the construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.

⁶ *Electric Utilities Act*, Section 5.

⁷ Paragraphs 10 to 15 are substantially reproduced from Decision [2010-493](#): ENMAX Shepard Inc. – Construct and Operate 800-MW Shepard Energy Centre, Application No. 1605340, Proceeding ID 241, October 21, 2010 at paragraphs 17-26 *mutatis mutandis*.

18. In Decision [2001-111](#),⁸ the Commission's predecessor, the Alberta Energy and Utilities Board (EUB or the Board), explained its approach to assessing whether the approval of a power plant is in the public interest as follows:

The determination of whether a project is in the public interest requires the Board to assess and balance the negative and beneficial impacts of the specific project before it. Benefits to the public as well as negative impacts on the public must be acknowledged in this analysis. The existence of regulatory standards and guidelines and a proponent's adherence to these standards are important elements in deciding whether potential adverse impacts are acceptable. Where such thresholds do not exist, the Board must be satisfied that reasonable mitigative measures are in place to address the impacts. In many cases, the Board may also approve an application subject to specific conditions that are designed to enhance the effectiveness of mitigative plans. The conditions become an essential part of the approval, and breach of them may result in suspension or rescission of the approval.

In the Board's view, the public interest will be largely met if applications are shown to be in compliance with existing provincial health, environmental, and other regulatory standards in addition to the public benefits outweighing negative impacts.⁹

19. The Commission is of the view that this approach to assessing whether a proposed power plant is in the public interest remains consistent with the purpose and intent of the statutory scheme.

20. AUC Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments* (AUC Rule 007) applies to applications to the AUC for the construction and operation of power plants, substations and transmission lines that are governed by the *Hydro and Electric Energy Act*. The application must meet the informational and other requirements set out in AUC Rule 007 and the applicant must also receive all approvals required pursuant to other applicable provincial and federal legislation.

4 Description of the project

21. As mentioned earlier, Capital Power proposed this project to meet Alberta's expected increases in power requirements arising from continued economic growth, and from the retirements of existing coal generating units, in the 2017-2020 time frame.¹⁰

4.1 Siting

22. Capital Power explained that the proposed power plant would be constructed on a brownfield site adjacent to the existing facilities located at the Genesee generating station. The existing Genesee generating station site, including the project land, is owned by Capital Power. The project site is currently being used as a location for siting portable office trailers and as a laydown area for equipment used for the existing Genesee generating station.

⁸ EUB Decision 2001-111: EPCOR Generation Inc. and EPCOR Power Development Corporation 490-MW Coal-Fired Power Plant, Application No. 2001173, December 21, 2001.

⁹ EUB Decision 2001-111, page 4.

¹⁰ Exhibit No. 0022.00.EPGSI-2996, Genesee Generating Station Units 4 & 5 – Rule 007 Application for a Power Plant, PDF page 6.

23. Because the proposed power plant would be located on the existing Genesee generating station site, Capital Power stated that the existing viewscape would not change appreciably and that it would make effective use of the existing Genesee generating station infrastructure. Specifically, it would utilize the existing river water intake, pump house, Genesee cooling pond, point of discharge to the North Saskatchewan River, settling pond, sewage lagoon, access roads and transmission interconnection. The applicant submitted that traffic increases would be slight to moderate and limited to the construction period of the project.¹¹

4.2 Technology

24. Capital Power indicated that the project would use advanced natural gas combined-cycle technology. The project includes two “1-on-1” units, each consisting of a single natural gas turbine paired with a heat recovery steam generator, and a single steam turbine. It explained that the natural gas combined-cycle technology process begins with a natural gas turbine generator that produces power and exhaust heat. The exhaust heat is used to create steam in a heat recovery steam generator that drives a steam turbine generator. Because this is a combined process, the gas turbine and the steam turbine together generate power with greater efficiency and lower emissions.

25. Capital Power explained that its application was prepared and submitted on the basis of generic equipment. Specifically, the information required by AUC Rule 007, such as air emissions, water and noise modelling and other analyses were undertaken and presented on the basis of implementing the best available and most economic technologies. Capital Power filed a letter¹² with the AUC on August 13, 2013 stating that it intended to file an application for the proposed power plant on the basis of generic equipment, with the final equipment selection meeting or exceeding the environmental performance associated with the generic equipment. Capital Power explained that it used this approach to best utilize advances in technology and submitted that the final selected equipment for the project would achieve the same or better performance as the generic equipment outlined in the application and will meet or exceed the environmental performance measures predicted in the studies in support of the application.

26. Capital Power stated that the project is anticipated to supply approximately 1,020 MW of net electricity to the Alberta Interconnected Electric System (AIES). The electric power to be generated by the project would be transmitted to the AIES through an approximately 200-metre long, 500-kilovolt (kV) transmission line from the high-voltage side of units 4 and 5 generating step-up transformers to the Genesee switchyard owned by EPCOR. Capital Power confirmed that this 200-metre long transmission line would also be owned by EPCOR.

4.3 Environment

27. An environmental overview of the proposed project was conducted for Capital Power by Stantec Consulting Ltd. (Stantec).

28. In its report, Stantec described previous and on-going wildlife studies conducted at the Genesee generating station.¹³ Potential effects to amphibians, birds, migratory birds, mammals

¹¹ Exhibit No. 0054.01.EPGSI-2996, Capital Power letter of the AUC re: standing, PDF page 4.

¹² Exhibit No. 0008.00.EPGSI-2996, Appendix J – Capital Power’s Regulatory Submission Approach “August Letter” to the Alberta Utilities Commission.

¹³ Exhibit No. 0003.00.ESPGI-2996, Genesee Generating Station: Units 4 and 5 Environmental Overview Report, Section 3.0 Current State of the Environment, PDF page 9-19.

and wildlife species at risk were evaluated. Stantec concluded that because the proposed project would be located on a brownfield site, there would be a low habitat value for wildlife.¹⁴

29. Native soils on the project site were previously replaced by gravel fill and topsoil. The majority of vegetation around the project site has been cleared for agricultural production with some isolated pockets of aspen woodland remaining.

30. Further, although a number of wetlands are located nearby, they are not hydrologically connected to the project site.

31. Surface water runoff was described as being contained and directed to an effluent settling pond prior to flowing into the cooling pond. No additional diversion of water from the North Saskatchewan River is required beyond the volumes already permitted under the current licence to divert water issued by Alberta Environment (ESRD) for the existing Genesee generating station. The annual volume of water discharged to the river is expected to be reduced from current conditions due to additional evaporative losses. These losses were described as small compared to the mean annual flow in the river, which is 120 metres wide at the pump house.

32. The North Saskatchewan River was described as the primary waterbody providing fish habitat in the region and effects to fish, fish habitat and aquatic species of concern were assessed. The river was described as a Class A watercourse due to the presence of significant amounts of sturgeon habitat in the project area. Stantec concluded that the cooling pond temperature would slightly increase, reducing discharge back to the North Saskatchewan River. However, due to the comparatively small volume change, it did not expect effects to fish and fish habitat.

33. Capital Power also stated that using existing infrastructure from the Genesee generating station would further reduce potential environmental impacts that may be caused by the project.

34. Capital Power submitted that because the proposed power plant uses natural gas combined-cycle technology, which combines the process of the gas turbine and the steam turbines, the project would generate power with greater efficiency and lower emissions and meet Alberta air emission standards.

35. Stantec conducted an air quality assessment to assess potential effects on air quality from the project's emissions. The maximum predicted ambient air concentrations of nitrogen dioxide (NO₂), sulphur dioxide (SO₂), fine particulate matter (PM_{2.5}), carbon monoxide (CO) and ammonia (NH₃) associated with emissions from the project were predicted to be much lower than the Alberta Ambient Air Quality Objectives. Stantec's assessment indicated that relative to current ambient conditions, air emissions from the project would result in an increase of maximum predicted concentrations of key substances of less than three per cent .

36. In response to Commission information requests, Capital Power acknowledged that the construction and operation of the proposed power plant would create further emissions of fine particulate matter (PM_{2.5}) by secondary formation, because of existing emissions in the area. Capital Power explained that secondary formation particulate emissions are created not from the project alone, but from existing emissions that undergo a chemical transformation. Because these

¹⁴ Exhibit No. 0003.00.ESPGI-2996, Genesee Generating Station: Units 4 and 5 Environmental Overview Report, Section 4.0 Conclusion, PDF page 19.

types of emissions were not evaluated in Stantec's original air quality assessment, Capital Power performed additional modelling to include secondary formation particulate emissions. Its modelling indicated that PM_{2.5} levels, including secondary formation particulate emissions, currently exceed the Alberta Ambient Air Quality Objectives near the Genesee West Mine (a coal mine) by 1.6 µg/m³.¹⁵ Capital Power submitted that the increase in the level of secondary particulate formation emissions caused by the construction and operation of the project from current levels would be up to 0.3 per cent, and would therefore be negligible.

37. Capital Power submitted a noise impact assessment (NIA), completed by Stantec, to predict the noise impact of the existing Genesee generating station and the proposed power plant. The NIA predicted the cumulative sound level (i.e., project, existing facilities and ambient sound level) at seven dwellings located within three kilometres of the project boundary. The existing energy-related facilities included in the cumulative sound level assessment were the existing Genesee generating station, the AltaLink SunnyBrook 510S substation and the Genesee West Mine.

38. The most impacted dwelling, Receptor ID R50 (R50), is located 1.9 kilometres northeast of the project boundary. At R50, the permissible sound level as stipulated in AUC Rule 012: *Noise Control* (AUC Rule 012) is 50 dBA L_{eq} during the daytime period and 40 dBA L_{eq} during the nighttime period. The existing sound level at R50 was predicted to be 38.8 dBA L_{eq} nighttime. At R50, the sound level contribution from the project alone was predicted to be 29.3 dBA L_{eq}, resulting in a predicted cumulative sound level of 39.3 dBA L_{eq} nighttime, which is below the nighttime permissible sound level of 40 dBA L_{eq}.

39. Capital Power explained that, should the project be approved, noise mitigation measures would have to be implemented to achieve compliance with the permissible sound level and suggested the following noise mitigation measures could be implemented to achieve compliance: (i) adding additional silencers on the combustion air intakes for proposed generation units 4 and 5; (ii) adding stack silencers for proposed generation units 4 and 5; and (iii) limiting the sound power level for the step-up transformers to 105 dBA under full load.

40. In response to information requests, Capital Power indicated that specific mitigation commitments on silencers for the combustion air inlet and stack exhaust associated with the project would be implemented once the noise guarantee information for the selected equipment is known. Capital Power stated that it would also assess noise mitigation measures to reduce noise from the existing Genesee generating station. Capital Power committed to collectively reduce noise levels at the Genesee generating station site to comply with the permissible sound level values outlined in AUC Rule 012 and to completing a post-construction noise survey at the most impacted dwelling.

41. The NIA stated that Capital Power is committed to managing noise issues and to promptly respond to any noise complaints.

42. The NIA concluded that the predicted cumulative sound levels of the project met the permissible sound level values of AUC Rule 012 at all dwellings assessed.

¹⁵ Exhibit No. 0064.06.ESPGI-2296, Final Response to AUC IRs 17-19 (July 05,2014), PDF page 2 Table 1 *Maximum Predicted Ground-level PM_{2.5} Concentrations (includes Secondary Particulate) for the Base, Project, and Application Cases.*

43. In its application, Capital Power submitted that it would be required to obtain approvals and clearances from a number of other government departments or agencies including ESRD, the Canadian Environmental Assessment Agency, Transport Canada, NAV Canada, Leduc County and Alberta Culture (formerly Alberta Culture and Community Spirit).

44. Capital Power filed project disclosure documents in support of the environmental assessment process with ESRD on September 13, 2013. On September 19, 2013, ESRD responded¹⁶ to Capital Power that an environmental impact assessment process report was not mandatory for the project and that further environmental assessment of the project was not required. However, ESRD informed Capital Power that it may have other regulatory requirements to meet pursuant to the *Environmental Protection and Enhancement Act* and/or the *Water Act*.¹⁷

45. Capital Power also indicated that it applied to ESRD to amend the existing *Environmental Protection and Enhancement Act* approval in December 2013 to include the proposed power plant. On January 30, 2014, ESRD acknowledged receipt of Capital Power's application and considered it to be complete for the purpose of public consultation.

46. Capital Power submitted that it had also worked with ESRD to determine if the current Alberta *Water Act* licences had to be amended. Because no additional diversion of water from the North Saskatchewan River was required beyond the volumes permitted under the current licences, Capital Power stated that it did not anticipate that an application to amend the current licences to divert water would be required for the proposed power plant. Capital Power also submitted that it was assessing the merits of extending the expiration date of one of its current *Water Act* licences to align with potential issuance of the *Environmental Protection and Enhancement Act* approval for the project and stated that it would apply for an amendment from ESRD, if required.

47. Because the project focused on expanding an existing fossil-fuelled electrical generating facility resulting in an increase in production capacity of 50 per cent or more, Capital Power also submitted a project description to the Canadian Environmental Assessment Agency (CEA Agency) on November 25, 2013, to determine if a federal environmental assessment was required. On December 2, 2013, the CEA Agency responded¹⁸ to Capital Power stating that it would conduct a 45-day review of the project description, which included a 20-day public comment period on the project description. During the review period, the CEA Agency considered whether the project would cause adverse environmental effects and whether a CEA Agency environmental assessment pursuant to the *Canadian Environmental Assessment Act* was required. After finding that the environmental effects of the project were well understood and that the project was unlikely to result in adverse environmental effects as defined in CEAA 2012,¹⁹ the CEA Agency informed²⁰ Capital Power that a federal environmental assessment was not required for the project.

¹⁶ Exhibit No. 0013.00.EPGSI-2996, EIA Determination Letter from ESRD.

¹⁷ Ibid.

¹⁸ Exhibit No. 0001.00.EPGSI-2996, Appendix B – Letter from Canadian Environmental Assessment Agency.

¹⁹ The *Canadian Environmental Assessment Act*, 2012.

²⁰ Exhibit No. 0029.05.EPGSI-2996, Notification of the Screening Decision for the Proposed Genesee Generating Station Expansion Project.

48. Although Capital Power currently holds a development permit for the existing Genesee generating station, after discussions with the Leduc County Planning and Development Department, Capital Power stated that it would prepare an application to amend the existing development permit at a later time in the project schedule.

49. By letter dated May 31, 2001, Alberta Culture granted *Historical Resources Act* clearance for Section 25, Township 50, Range 3, west of the Fifth Meridian, where the existing Genesee generating station is located.²¹ Because the proposed power plant would be constructed in the southeast quarter of Section 25, Township 50, Range 3, west of the Fifth Meridian, on a brownfield site adjacent to the existing Genesee generating station and within the existing plant fence line, Capital Power submitted that no further application under the *Historical Resources Act* would be necessary for the proposed power plant.

50. Because Capital Power made its application on the basis of generic equipment and that a detailed engineering design has not yet been completed for the project, it has not submitted an application to Transport Canada for aeronautical obstruction clearance. After a natural gas turbine is selected, based on equipment characteristics, environmental performance attributes, cost and operating parameters, Capital Power will finalize details of the emission stack heights and specific locations, and then submit an application to Transport Canada for its review and approval.

51. Capital Power consulted with stakeholders who have a potential interest in or who may be directly and adversely affected by the project. Twenty-three individual landowners and four business landowners were identified for notification and personal consultation by Capital Power. Capital Power also identified and engaged in consultation with a number of companies having interests and operations within 1.5 miles of the project area, synergy groups, municipalities, the Genesee Community Advisory Task Group, local community groups, schools, non-governmental organizations and Aboriginal groups. As part of its participant involvement program, Capital Power sent out project information packages, placed public notices in local newspapers, and held open houses to discuss the project and provide opportunities for stakeholders to ask questions. Based on the stakeholder consultation undertaken, Capital Power submitted that it did not receive comments, questions or concerns that were not already incorporated into the design of the project or that would cause Capital Power to modify the project.

5 Commission findings

52. In deciding if the proposed power plant is in the public interest, the Commission considered the social, economic and environmental effects of the project.

53. The proposed power plant is located on a brownfield site adjacent to the existing Genesee generating station and will utilize the existing Genesee generating station's infrastructure. The siting of the power plant in close proximity to the existing generating station and the use of existing infrastructure in the proposed power plant will result in fewer environmental effects than construction on a previously undisturbed site.

²¹ Exhibit No. 0002.00.EPGSI-2996, Appendix C – *Historical Resource Act* Clearance Letter from Alberta Culture, PDF pages 4-5.

54. The Commission has reviewed the natural gas combined-cycle technology proposed in the application and acknowledges Capital Power's decision to propose the project on the basis of generic equipment. The Commission is of the view that it is prudent for proponents of generating capacity additions in Alberta to show improvement in technology selection over that currently in use. The Commission is encouraged that Capital Power has proposed to use natural gas combined-cycle technology, which combines the process of gas turbines and steam turbines and would generate power with greater efficiency and lower emissions, in comparison with the technology used in other carbon-based power plants currently operating in Alberta and Canada. In this regard, the Commission accepts Capital Power's submission that the natural gas combined-cycle technology implemented will meet or exceed the environmental performance measures predicted in the studies in support of the application, as well as the Alberta air emission standards.

55. In Decision 2001-111, the Commission's predecessor, the EUB stated on the subject of air quality and associated health impacts:

The Board views that the AAAQG [Alberta Ambient Air Quality Guidelines] and other reference criteria accepted by AENV are the appropriate benchmarks for assessing predicted ambient air quality impacts of the proposed project. That is, the Board finds that these standards, guidelines and other environmental and health protection criteria define the maximum predicted cumulative effects that would be permissible. The Board views that emissions reductions or other mitigation would have to be incorporated into projects should substantive exceedances of the criteria be predicted.²²

56. The evidence of Capital Power demonstrates that air quality issues will be addressed through the applied-for power plant design and the commitments made in the application, including the proposed mitigation measures. In addition, Capital Power will be required to comply with the *Specified Gas Emitters Regulation* promulgated pursuant to the *Alberta Climate Change and Emissions Management Act* in relation to greenhouse gas emissions and has committed to meet all ESRD air emission standards.

57. The Commission understands that the Alberta Ambient Air Quality Objectives are regional goals or targets for air quality that may be affected by a variety of regulated and non-regulated emission sources. In this regard, Capital Power's evidence demonstrated that emissions from the project alone were predicted to be much lower than the Alberta Ambient Air Quality Objectives. Capital Power's further modelling indicated that, without the project, the secondary formation particulate emissions currently exceed the Alberta Ambient Air Quality Objectives near the existing Genesee West Mine and that a slight further exceedance of the Alberta Ambient Air Quality Objectives, (0.3 per cent) was predicted to occur with the construction and operation of the project at that location. The Commission accepts Capital Power's submission that this incremental difference is negligible. Furthermore, assuming there are no other changes in emissions, overall particulate emissions are expected to decrease upon the retirement of existing coal fired units because the project utilizes natural gas combined-cycle technology. In making its determination on the project's impact on air quality, the Commission has regard for the oversight of ESRD when establishing air emission standards for this project, that the Alberta Ambient Air Quality Objectives will be considered by ESRD

²² EUB Decision 2001-111, EPCOR Generation Inc. & EPCOR Power Development Corporation, Expansion of Genesee Power Plant (December 21, 2001), page 17.

when it establishes air emissions standards for the project, and that Capital Power has committed to complying with these air emission standards.

58. Based on all of the above, and given the nature of the proposed power plant, the natural gas technology used, the planned replacement of existing coal generating units and the power plant's distance from area residents, the Commission finds that the project's impact on air quality will be negligible.

59. The Commission has also considered the issue of incremental impacts to air quality and corresponding potential effects on health and finds that there is no evidence before it to indicate that this project will result in adverse health effects.

60. The Commission accepts Capital Power's submission that water withdrawals from the North Saskatchewan River would be within the existing licence to divert water limits. The Commission also accepts that the raw water intake from the North Saskatchewan River would not adversely impact the flow, that the warmer return-water and slightly reduced return volumes would have no significant effect on fish or fish habitat and that the proposed power plant does not require any additional water retention or holding ponds. In assessing the project's impacts, the Commission has taken into account Capital Power's commitments to mitigate effects to water resources and the oversight by ESRD in regard to the *Environmental Protection and Enhancement Act* approvals. The Commission is therefore satisfied that the proposed power plant will have minimal to low impacts on water, hydrology and stormwater runoff.

61. Compliance with existing regulatory requirements administered by other public or government departments or agencies are important elements in deciding if potential adverse impacts are acceptable and approval of a project is in the public interest. In this respect, the Commission has also taken into account the fact that both the ESRD²³ and the CEA Agency²⁴ determined that it was unnecessary for Capital Power to undertake a formal environmental assessment for the project. The Commission considers this to be generally supportive of the Commission's determination that the potential environmental effects of the project are well understood and can be mitigated to an acceptable degree.

62. With respect to the project's environmental noise impact, the Commission acknowledges and accepts Capital Power's commitment to meet the permissible sound level values outlined in AUC Rule 012 at all receptor locations assessed. Because Capital Power has not committed to implementing specific noise mitigation measures and the predicted cumulative sound level is close to the permissible sound level at several receptor locations, the project could only be approved with the following condition:

- The applicant must ensure that noise mitigation measures proposed in the application are implemented, if necessary, to ensure compliance with the permissible sound level at all receptor locations assessed. If noise mitigation measures are required to comply with the permissible sound level, the applicant shall file with the Commission within one year of connecting the power plant to the AIES, information on its selection of noise mitigation measures.

²³ Exhibit No. 00.13.00.EPGSI-2996, Appendix O – ESRD letter stating no EIA process is required.

²⁴ Exhibit No. 00.29.05.EPGSI-2996, Responses to AUC IRs, attachment 3, March 11, 2014.

63. In order to confirm compliance, Capital Power has made the commitment to complete a post-construction noise monitoring survey at the most impacted dwelling, R50. In this regard, the Commission finds that approval of the project would also require the following condition:

- The applicant must conduct a post-construction noise monitoring survey under representative operating conditions in accordance with AUC Rule 012 at the most impacted dwelling, R50, to verify and confirm the project complies with the requirements of AUC Rule 012. The applicant must then file a letter with the Commission which provides a summary of the post-construction survey and an indication whether the project is in compliance with the PSL requirements of AUC Rule 012. If the results of the survey indicate non-compliance with the rule, the applicant shall file the completed post-construction noise monitoring survey, as well as the identification of the noise attenuation measures the applicant is committing to implement and the timeline to implement measures to obtain compliance. The applicant shall complete the post-construction noise monitoring survey and file all relevant documents with the Commission within one year of connecting the power plant to the AIES.

64. Based on the evidence submitted by Capital Power, and taking into account the implementation of the above conditions, the Commission finds that noise from the construction and operation of the proposed project will comply with the permissible sound levels contained in AUC Rule 012.

65. In addition, the Commission anticipates that approval of this project would provide some economic benefits to the local surrounding areas.

66. The Commission considers that the siting of the power plant on a brownfield site close to the necessary transmission infrastructure has reduced the amount of additional related infrastructure considerably. The effect of this approach was to limit social impacts associated with the proposed plant to the areas in its immediate vicinity in contrast to other projects that require the construction of additional transmission facilities which may have their own associated impacts. In making this finding, the Commission notes Capital Power's acknowledgment that there will be a moderate amount of increased traffic in the project area during construction of the proposed power plant.²⁵ Having regard to size of the project, the fact that the project is served by more than one access road and that any increased amount of traffic would be temporary, the Commission finds this impact to be acceptable.

67. The Commission finds that the participant involvement and consultation program conducted by Capital Power meets the requirements of AUC Rule 007.

68. Having regard to the location of the proposed power plant and the nature of the technology proposed, the Commission is satisfied that the project is likely to have minimal adverse impacts to the environment and to area residents. The Commission is also satisfied that these minimal impacts can be mitigated to an acceptable degree.

69. As noted above, Capital Power's application was premised on generic equipment and a commitment that the final equipment selection would meet or exceed the environmental performance associated with the generic equipment. Given this approach, the Commission finds

²⁵ Exhibit No. 0054.01.EPGSI-2996, Capital Power Letter to AUC re standing SLAWG, Savard and Pembina, page 4.

that approval of the project requires the following condition: when the applicant has made its final selection of equipment for the project, it must file a report with the Commission in which it identifies the final selected equipment for the project. The applicant must also confirm in the report that the equipment it selected for the project will meet or exceed the environmental performance associated with the generic equipment.

70. Once the project-specific equipment is selected and the detailed engineering design is complete, the Commission expects Capital Power to uphold its commitment to file an application with Transport Canada for aeronautical obstruction clearance and to also file an application with Leduc County to amend its existing development permit.

71. Based on the foregoing, in accordance with Section 17 of the *Alberta Utilities Commission Act*, the Commission finds that construction and operation of the proposed power plant is in the public interest, having regard to the social and economic effects of the proposed power plant and its effects on the environment.

6 Decision

72. Pursuant to Section 11 of the *Hydro and Electric Energy Act*, the Commission approves the application and grants Capital Power the approval set out in Appendix 1 – Power Plant Approval No. U2014-287 – August 12, 2014 (Appendix 1 will be distributed separately).

Dated on August 12 2014.

The Alberta Utilities Commission

(original signed by)

Anne Michaud
Panel Chair

(original signed by)

Neil Jamieson
Commission Member

(original signed by)

Patrick Brennan
Acting Commission Member

Appendix A – Commission ruling on confidentiality request of the Gunn Métis Local 55

[\(return to text\)](#)



Appendix A -
Commission Ruling on
(consists of 6 pages)

May 26, 2014

To: Interested Parties

**Capital Power Generation Services Inc.
Genesee Generating Station Units 4 and 5
Application No. 1610202
Proceeding No. 2996**

Commission ruling on a confidentiality request by the Gunn Métis Local 55

1. In this ruling, the Alberta Utilities Commission (AUC or the Commission) must decide whether to grant a request by the Gunn Métis Local 55 (Gunn Métis) for confidential treatment of a map identifying Aboriginal harvesting locations in the vicinity of the proposed project and an affidavit that it intends to file in support of its statement of intent to participate in this proceeding. The Commission has ruled on this motion and has directed me to write to interested parties to advise them of its reasons for this ruling.

Background

2. On April 23, 2014, the Gunn Métis filed a motion with the AUC for a confidentiality order under Section 13 of AUC Rule 001: *Rules of Practice* (AUC Rule 001). In its April 23, 2014 letter, the Gunn Métis requested confidential treatment of a map identifying Aboriginal harvesting locations in the vicinity of the proposed project. Specifically, the Gunn Métis requested that the above document be treated as confidential and not be filed on the public record. The Gunn Métis submitted that this map contained information related to medicinal plants and other resources which are scarce due to high levels of residential, industrial, and other forms of development affecting the area. The Gunn Métis also submitted that the record contains no information that would cause prejudice to the public if kept confidential.

3. Further, the Gunn Métis requested that any hearing convened be held *in camera* so that the information in the map would remain confidential.

4. On April 28, 2014, the Commission issued a letter to interested parties and directed the applicant, and any other party who wished to reply, to file a response to the Gunn Métis' motion by May 5, 2014.

5. Subsequently, on April 28, 2014, the Gunn Métis amended its motion for a confidentiality order under Section 13 of AUC Rule 001. It also requested confidential treatment of an affidavit of one of its members. The Gunn Métis submitted that the affidavit described its member's concerns about the proposed project, and the member's use and rights exercised. In support of its request, the Gunn Métis indicated that its "member had expressed deep concern about losing contractual and employment opportunities in the area because the member's experience is that Aboriginal individuals who raise concerns about impacts to their Aboriginal

rights in regulatory proceedings are often perceived as “trouble makers” who oppose development.”¹

6. On April 29, 2014, the Commission directed the applicant, and any other party who wished to reply, to file a response to the Gunn Métis’ amended motion by May 9, 2014.

7. On May 1, 2014, the Commission received correspondence from an area resident who noted that the proposed power plant would be on an existing plant site. The resident further asserted that the project did not put at risk the cultural concerns expressed by the Gunn Métis.

8. On May 13, 2014, the Gunn Métis filed a reply with respect to its motion. It submitted that there was an important interest at stake and a serious risk to that interest. In support of its submission, the Gunn Métis indicated that the comments made by the area resident, a recently retired member of the applicant’s upper management, in this proceeding constituted an exceptional circumstance that is consistent with the member’s identification of the risks involved in disclosing their identity and information.

9. In addition, the Gunn Métis stated that the member’s Aboriginal colleague, working under the same contractual terms as the member, lost their contract within the last 12 months, shortly after it became known that the individual was involved in organizing Aboriginal rights and after the individual’s correspondence opposing a certain government action was posted to a website.

10. In its reply, the Gunn Métis further submitted that there is no evidence or information before the Commission of any prejudice that would flow to the applicant, any other party, or the public through the granting of the Gunn Métis confidentiality motion.

Ruling

11. In issuing this ruling, the Commission has considered all relevant materials relating to the Gunn Métis’ application for confidentiality. References in this ruling to specific parts of the record are intended to assist the reader in understanding the Commission’s reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

The test for confidentiality

12. The information that the Gunn Métis seeks to keep confidential under Section 13 of AUC Rule 001 is a map identify harvesting locations and the name of its member and that member’s description of historical activities in the project area that may be directly and adversely affected by the Commission’s decision on the application.

13. The Commission is part of the system of administrative justice and must uphold an open public system. There is a strong presumption in favour of the open court principle in AUC proceedings to ensure the transparency of the Commission’s process from the inception of a matter, and AUC rules reflect this presumption.² In its past decisions, the Commission has

¹ Exhibit 51.01, Gunn Metis Local 55 letter to AUC page 2.

considered that a confidentiality order should only be issued in limited circumstances because it is part of the system of administrative justice.²

14. Subsection 13(4) of AUC Rule 001 describes when the Commission may issue a confidentiality order. That subsection states:

13.4 The Commission may, with or without a hearing, grant a request for confidentiality on any terms it considers appropriate

(a) if the Commission is of the opinion that disclosure of the information could reasonably be expected

(i) to result in undue financial loss or gain to a person directly affected by the hearing or other proceeding, or

(ii) to harm significantly that person's competitive position,

or

(b) if

(i) the information is personal, financial, commercial, scientific or technical in nature,

(ii) the information has been consistently treated as confidential by a person directly affected by the hearing or other proceeding, and

(iii) the Commission considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the proceeding.

15. When deciding whether to issue a confidentiality order, in addition to applying the test established in Section 13, the Commission must also bear in mind the direction of Canada's courts on such matters.² In *Sierra Club of Canada v. Canada Minister of Finance*,³ the Supreme Court of Canada found that a confidentiality order under the Federal Rules of Court should only be granted when:

(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.⁴

16. The Supreme Court in *Sierra Club* also emphasized that the risk in question must: (i) be real and substantial; (ii) be well grounded in the evidence; and (iii) pose a serious threat to the commercial interest in question.⁵ This is consistent with the requirement in Section 13(4) of AUC Rule 001 which indicates that the party claiming confidentiality must point to the specific

² AUC Decision 2011-199; Application No.1607016; Proceeding ID No. 1077, May 5, 2011.

³ 2002 SCC 41 [*Sierra Club*].

⁴ 2002 SCC 41 at paragraph 53.

⁵ 2002 SCC 41 at paragraphs 54-55.

harm that would be caused if the information were placed onto the public record. Further, the interest at risk must be one which can be expressed in terms of a public interest in granting confidentiality.

Commission's ruling

17. With respect to the map, the Commission is not satisfied that the Gunn Métis has established that the location of its Aboriginal harvesting grounds is information that is commercial in nature, such that its disclosure could be reasonably expected to result in an undue financial loss or harm significantly the Gunn Métis', or its member's, competitive position. In the Commission's view, the location of traditional harvesting grounds more appropriately falls under the category of personal information. In the following section, the Commission will determine whether the map that is the information subject to the confidentiality request warrants protection under subsection 13(4)(b) of AUC Rule 001.

18. Section 13(4)(b) of AUC Rule 001 requires the Gunn Métis to demonstrate that:

- (a) The information contained in the map is personal, financial, commercial, scientific or technical in nature;
- (b) The map has been consistently treated as confidential by the Gunn Metis; and
- (c) The Gunn Métis' interest in confidentiality outweighs the public interest in the disclosure of that information in the proceeding.

19. The Commission considers that the map contains the exact location of traditional harvesting grounds which the Gunn Métis uses to exercise Aboriginal rights. The map also appears to have been consistently treated as confidential by the Gunn Métis and, for the purposes of this ruling, the Commission is prepared to assume without deciding that this information has been consistently treated by the Gunn Métis, and by the member, as confidential.

20. Based on the information submitted by the Gunn Métis, the Commission finds that there could be a real and substantial risk to the interests of the Gunn Métis if the map were disclosed. The information contained in the map is personal in nature and is sensitive. The map's release may prove detrimental to the Gunn Métis' acquisition of medicinal plants and may impede the Gunn Métis members' ability to exercise their constitutionally protected Aboriginal rights. In this case, the specific harm identified is that members of the public would be given information on the exact location of traditional harvesting grounds and the Gunn Métis' traditional harvesting of rare plants and other resources may be impacted. Based on the nature of the information depicted in the map, the Commission considers that the salutary effects of public disclosure in the name of procedural fairness are outweighed by the deleterious effects to the Gunn Métis in this instance. Based on the foregoing, the Commission finds that the Gunn Métis' interest in confidentiality outweighs the public interest for disclosure and therefore grants the request for confidential treatment of the map, for the purposes of Proceeding No. 2996.

21. With regard to the affidavit, for the reasons that follow, the Commission is not satisfied that the member's identity and other information that may be contained in the affidavit meet the requirements of Section 13 of AUC Rule 001.

22. As stated above, the Gunn Métis submitted that its member claimed that he would suffer loss if he appears to be opposing development. The Commission considers that this ground directly correlates with the test established by subsection 13(4)(a)(ii) of AUC Rule 001.

23. In the Commission's view, the Gunn Métis provided insufficient information on the risk to the member's interests to warrant the granting of a confidentiality order for the information contained within the affidavit. As noted in the *Sierra Club* decision, the risk in question must be real and substantial and well-grounded in the evidence. In this case, the Commission is of the view that the risks associated with disclosing the member's identity are general and not supported by specific evidence. In making its determination, the Commission does not accept that the comments submitted by the area resident provide evidence of a real and substantial risk to the member's interests.

24. The Commission has also considered whether the affidavit meets the requirements of subsection 13(4)(b) of AUC Rule 001 articulated above with respect to the map. To qualify for confidential treatment under this subsection, the name of the Gunn Métis member must be information that is personal, financial, commercial, scientific or technical in nature, and must have been consistently treated by the Gunn Métis and the member as confidential. Further, the Commission must also find that the Gunn Métis' interest in confidentiality outweighs the public interest in the disclosure of the member's name in the proceeding.

25. For the reasons that follow, the Commission is not satisfied that the information in the affidavit is personal, financial, commercial, scientific or technical in nature. Specifically, the Commission finds that the general nature of the member's identity and the information about the traditional harvesting activities exercised is neither of a personal nor commercial nature. The Commission notes, in this respect, that the Gunn Métis did not argue that the identity of its member was personal, financial, commercial, scientific or technical information.

26. The Commission also considers that the Gunn Métis did not indicate whether the member and the Gunn Métis have consistently treated this information as confidential. Accordingly, the Commission could dismiss the Gunn Métis' motion for confidentiality on the basis that the information for which confidential treatment is sought does not meet the criteria established by subsection 13(4)(b)(i) of AUC Rule 001. However, for the purposes of this ruling, the Commission is prepared to assume without deciding that this information has been consistently treated by the Gunn Métis and the member as confidential.

27. Even if the Gunn Métis had convinced the Commission that its member's name satisfied the criteria articulated in subsection 13(4)(b)(i), the Commission does not consider that the Gunn Métis member's interest in confidentiality outweighs the public interest for disclosure for the following reasons.

28. The deleterious effects of a confidentiality order, in this context, includes the public interest in an open and accessible proceeding. The Commission's mandate is to have a fair, open and transparent process. The Commission's website, notices, and other publications advise parties and the community that its proceedings are open to the public and information relating to its applications are publically accessible. Parties that engage the Commission's services should be aware that they are embarking on a process that presumes a public airing of their views. The Commission also considers that parties making submissions are more likely to be truthful if their

identities are known and that public scrutiny provides valuable input in the Commission's proceedings.

29. Further, the Commission considers that when providing reasons in its decisions, it may identify parties and their witnesses by name and may set out information about them that is relevant and necessary to the determination of the application.

30. Based on the forgoing, the Commission has denied the Gunn Métis' request to submit an affidavit of one of its members on a confidential basis.

Conclusion

31. Because the Commission has granted a confidentiality order for the map, the Commission directs the Gunn Métis to submit the map either via email to the undersigned or via fax or mail. The map will only be available to registered parties who sign the confidentiality undertaking attached to this ruling as Schedule A and filed as Exhibit No. 0059.02.

32. The applicant and any other party wishing to receive copies of the map, should file a confidentiality undertaking on the record of Proceeding No. 2996. AUC staff will then distribute the map to these parties in due course.

33. With respect to the affidavit, the Gunn Métis may file the affidavit on the public record of Proceeding No. 2996. If the Gunn Métis intends to do so, the Commission directs the Gunn Métis to file the affidavit by June 2, 2014. If not, the Commission will consider the standing of the Gunn Métis on the basis of the information previously submitted by the Gunn Métis and the map which is the subject of the confidentiality order.

Yours truly,

Shanelle Sinclair
Commission Counsel

Attachment

Appendix B – Commission ruling on standing

[\(return to text\)](#)



Appendix B - Ruling
on Standing.pdf

(consists of 10 pages)

June 13, 2014

To: Interested Parties

Capital Power Generation Services Inc.
Genesee Generating Station Units 4 and 5
Application No. 1610202
Proceeding No. 2996

Ruling on standing

1 Overview and nature of the issue to be decided

1. On March 4, 2014, the Alberta Utilities Commission (AUC or the Commission) issued a notice of application for Proceeding No. 2996. The applicant, Capital Power Generation Services Inc. (Capital Power) owns and operates the existing Genesee Generating Station (units 1 to 3) located approximately 30 kilometres southwest of Stony Plain, Alberta. Proceeding No. 2996 is an application to construct and operate two additional natural gas-fired generation units, to be designated as units 4 and 5 with a total capacity of 1,050 megawatts (the proposed power plant or project), on a site adjacent to the existing Genesee Generating Station.

2. In the notice of application, the Commission directed any person who had concerns about or objections to the application, or who wished to support the application, to file a submission by March 28, 2014. The Commission subsequently extended the deadline for submissions to April 28, 2014, to accommodate parties who had not received the original notice. The Commission received seven submissions in response to the notice of application. Of the submissions received, five were objections, one was a letter of support, and one was a letter from EPCOR Distribution & Transmission Inc. (EDTI).

3. The Commission, by letter dated April 15, 2014, wrote to the applicant and afforded it with an opportunity to comment upon the standing of those persons who filed submissions on the record of Proceeding No. 2996.

4. In this ruling, the Commission must decide if the persons who filed a submission with respect to the construction and operation of the proposed power plant have demonstrated that they have rights that may be directly and adversely affected by the Commission's decision on the project application. A person who demonstrates the potential for direct and adverse effect is said to have "standing".

2 Project background

5. The project was proposed by Capital Power "to meet expected increases in Alberta's power requirements in the 2017-2020 timeframe, arising from continued economic growth and from the expected retirements of existing coal generating units."¹ The proposed power plant, if

¹ Exhibit No. 022, Application, page 6.

approved, would be constructed on a previously disturbed (brownfield) site, adjacent to the existing Genesee Generating Station. The project land is owned by the applicant and the closest resident is located over eight kilometres away from the proposed power plant site.

6. The proposed power plant would make use of the existing Genesee Generating Station infrastructure, specifically, utilization of the existing river water intake, pump house, Genesee cooling pond, point of discharge to the North Saskatchewan River, settling pond, sewage lagoon, and access roads. Capital Power currently holds an approval to divert water from the north Saskatchewan River and will not require a new diversion approval to meet the water requirements of the new project volume is required.

3 Views of interested parties

3.1 Objections and statements of intent to participate

7. The Commission received statements of intent to participate from Darren Savard, Kimberly Savard, the Strawberry Landowners Air and Water Group (SLAWG) the Gunn Métis Local 55 (Gunn Métis), the Pembina Institute and EDTI. The Commission also received a letter of support from Terry and Elaine Aronyk.²

8. Mr. Savard submitted that he was concerned with the ability of Secondary Highway 770 to accommodate increased traffic in the area of the North Saskatchewan River.³ Mr. Savard also questioned whether further power lines would be required in the area. Ms. Savard expressed similar concerns with respect to the impacts associated with increased traffic from the construction and operation of the proposed power plant.

9. The SLAWG is a landowner group represented by Ms. Debbie Bishop of Prowse Chowne LLP and is comprised of the following individual members: Christopher Irish, Marc and Lorelei McLeod, Brian Staszewski, Ryan Morton, Gerald Gwodz, Norman and Arlene Heitzman, Brenda and Garwin Baynes, and Donna and Walter Bukkams. Members of the SLAWG live in the vicinity of the proposed power plant site and submitted that, as such, they may be directly and adversely affected by the decision of the AUC.

10. The SLAWG expressed concerns related to the proposed power plant's impact on water quality and supply, air quality including health risks, and traffic-related impacts including noise and nuisance. The SLAWG further submitted that some of its members were members of the group formerly known as the Clean Energy Coalition who appeared before the Commission's predecessor, the Alberta Energy Utilities Board (EUB) in 2001, and again in 2010 before the AUC to make submissions with respect to the approval of the existing Genesee Generating Station.

11. The Gunn Métis submitted that the proposed power plant is located within its traditional, ancestral territories. Specifically, it asserted that the project is nearby or on lands that its ancestors historically used, and that it continues to be used today for a number of traditional purposes in the process of exercising Aboriginal rights.

² Exhibit No. 30.01, EDTI SIP, paragraph 4.

³ Exhibit No. 30.01, Savard Rule 001 Section 24 Response to Notice.

12. The Gunn Métis submitted a supplement to its statement of intent to participate as well as a map identifying aboriginal harvesting grounds in support of its request for standing, the latter of which was granted confidential treatment by the Commission in its May 26, 2014 ruling.⁴

13. The Pembina Institute, a not-for-profit non-government organization, filed its statement of intent to participate on March 28, 2014. The Pembina Institute expressed concerns about the proposed power plant's impact on regional air quality and other environmental impacts, including water use and quantity. These concerns related to the cumulative impacts from the increased number of generation facilities in the area, particularly through the contribution to air contaminants in the region. In its submission, the Pembina Institute stated that the proposed power plant will contribute emissions to an overburdened airshed, and there is no guarantee that air emissions from coal generation will decrease before emissions from the proposed power plant are added.

14. The Pembina Institute further submitted that its Edmonton office, staff, board members, as well as the proposed power plant site, are located in the Capital Region airshed. The Pembina Institute also expressed concerns pertaining to the local environment including impacts to the North Saskatchewan River. The Pembina Institute submitted that approval of the proposed power plant could directly and adversely affect its interests.

15. EDTI explained, in its submission, that it is an electricity distribution and transmission company which owns and operates the Genesee 330P substation currently connected to the existing Genesee Generating Station. EDTI indicated that it intends to expand the Genesee 330P substation switchyard to connect the proposed power plant to the Alberta Interconnected Electrical System in the future. EDTI further stated that it intends to monitor the proceeding as an interested stakeholder, but would like to reserve the right to participate more actively as it deems necessary.⁵

16. The applicant, by letter dated May 2, 2014, commented upon the standing of those parties who filed objections to the application. In its submission, the applicant stated:

...in previous proceedings the Commission has used a presumption that standing will not be granted to individuals that do not own or reside within 2000 meters of a proposed power plant, 2,000 m[etres] being the notification distance set out in Rule 007 for power plant applications. The effect of this presumption is that a party seeking standing bares the onus to bring forward information as to how they are directly and adversely affected by the proposed facility notwithstanding their lack of proximity.⁶

17. The applicant noted that neither Mr. nor Ms. Savard reside within 2,000 metres of the project site. It recognized the high traffic areas referred to by Ms. Savard in her submission, but noted that any increase in traffic due to the project would be slight to moderate and limited to the construction phase. The applicant submitted that Mr. and Ms. Savard do not meet the test for standing under the *Alberta Utilities Commission Act*.

⁴ Exhibit No. 51, Gunn Metis Letter to AUC.

⁵ Exhibit No. 30.01 EDTI SIP, paragraph 4.

⁶ Exhibit No. 54, Capital Power Letter to AUC re standing SLAWG, Savard and Pembina, page 2.

18. The applicant also observed that all members of the SLAWG reside more than 2,000 metres from the proposed power plant site. The applicant also responded to each of the project specific concerns raised by the SLAWG. The applicant submitted that the SLAWG's concerns were general and submitted that the SLAWG had not established how the proposed power plant may directly and adversely affect the Gunn Métis members' ability to use their asserted traditional territory for hunting, trapping, fishing, gathering plants and spiritual activities. Specifically, the applicant stated that the SLAWG failed to provide the Commission with any specific information about how the project's impact on water quality and use, air quality, health risks and noise and nuisance may directly and adversely affect its members.

19. With regard to the SLAWG's submission that its members had appeared before the Commission on past applications with respect to the existing Genesee Generating Station, the applicant submitted that those applications were coal-fired power plants and, therefore, could not be compared to the existing application.

20. Regarding the Gunn Métis' submission that the proposed project is located on its traditional lands, the applicant stated that the Gunn Métis members' ability to use their traditional territory would be unaffected by the construction and operation of the proposed project. The applicant noted that construction would take place on land already disturbed by previous construction activities and that the project is located entirely on its privately owned land, consequently, no public or Crown land would be disturbed. The applicant further submitted that there is minimal expected impact on wildlife and water use from the project's construction and operation.⁷

21. In response to the Pembina Institute's submission, the applicant submitted that the Pembina Institute's members do not reside within 2,000 metres of the project and that standing cannot be granted on the basis that there are unidentified individuals residing some unspecified distance away from the proposed power plant. The applicant also stated that the proposed power plant will not materially increase fine particulate matter concentrations present in the air, and that this concern does not support the Pembina Institute being granted intervener status in Proceeding No. 2996.⁸

4 The Commission's Ruling on Standing

4.1 How the Commission determines standing

22. Standing before the Commission is determined in accordance with subsection 9(2) of the *Alberta Utilities Commission Act* which states:

(2) If it appears to the Commission that its decision or order on an application may directly and adversely affect the rights of a person, the Commission shall

(a) give notice of the application in accordance with the Commission rules,

⁷ Exhibit No. 55, Capital Power Letter to AUC re standing of GLM 55.

⁸ Exhibit No. 54, Capital Power Letter to AUC re standing SLAWG, Savard and Pembina, page 4.

(b) give the person a reasonable opportunity of learning the facts bearing on the application as presented to the Commission by the applicant and other parties to the application, and

(c) hold a hearing.

23. In *Cheyne v. Alberta (Utilities Commission)*, the Alberta Court of Appeal characterized Section 9(2) as the equivalent of Section 26(2) of the Energy Resources Conservation Act and confirmed that the two-part test for standing under Section 26(2) applies to subsection 9(2). In an earlier decision, *Dene Tha' v. Alberta (Energy and Utilities Board)*, the Court of Appeal described that two-part test as follows:

...s. 26(2) has two branches. First is a legal test, and second is a factual one. The legal test asks whether the claim right or interest being asserted by the person is one known to the law. The second branch asks whether the Board has information which shows that the application before the Board may directly and adversely affect those interests or rights. The second test is factual.⁹

24. In its description of the factual test in the *Dene Tha'* decision, the Alberta Court of Appeal stated that:

It was argued before us that more recent case law on prima facie infringement of aboriginal or treaty rights changed things. But the Board still needed some facts to go on. It is not compelled by this legislation to order intervention and a hearing whenever anyone anywhere in Alberta merely asserts a possible aboriginal or treaty right. Some degree of location or connection between the work proposed and the right asserted is reasonable. What degree is a question of fact for the Board.¹⁰

25. In *Sawyer v. Alberta (Energy and Utilities Board)* the Alberta Court of Appeal commented further on the factual component of the standing test and stated that "...in considering the location or connection, the Board is entitled to look at factors such as residence, the presence or absence of other wells in the area, and the frequency and duration of the applicant's use of the area near the proposed site."

26. The Commission assesses the potential for direct and adverse effect on a case-by-case basis, having regard for the specific circumstances of each project application and each application for standing. The Commission considers that the expression of general or broad concerns about a project, without some link or connection to the demonstrated or anticipated characteristics of a project will generally be an insufficient basis for establishing the potential for a direct and adverse effect. In the Commission's view, this is the very mischief that the Alberta Court of Appeal identified in the *Dene Tha'* decision when it opined that "some degree of location or connection between the work proposed and the right asserted" is a necessary ingredient for standing.

⁹ *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68, paragraph 10.

¹⁰ *Ibid*, paragraph 14.

27. In Decision [2011-337](#),¹¹ the Commission considered an application by Maxim Power Corp. to construct and operate a new 500 megawatt coal-fired generating unit at the existing H.R. Milner generation station. The Commission received submissions on standing from individuals who owned or occupied lands approximately 20 kilometres from the proposed plant. The persons seeking standing raised issues relating to greenhouse gas emissions criteria, air contaminants and mercury, climate change and the impacts to water quantity and quality and fish in the Smoky River. The Commission found as follows with respect to standing in that case:

...the Commission would consider that person to have standing and the Commission would proceed with a public hearing at which that person would be able to participate. Typically, this test is met by a person who owns or occupies land in proximity to a proposed development, and who substantiates an interest, with a direct bearing on his or her lands or other right known to law, which could be directly and adversely impacted by a decision of the Commission with respect to the application. This is the essence of the test for standing as set out in the Cheyne case and Section 9(2) of the *Alberta Utilities Commission Act*. Matters of interest to parties living some distance from a proposed project and matters of general interest to persons in Alberta do not typically meet the statutory test for standing unless they are able to show that their rights may be directly and adversely impacted by a decision of the Commission with respect to the application.¹²

28. If the Commission finds that a person has standing pursuant to Section 9(2) of the *Alberta Utilities Commission Act*, it must hold a hearing to consider the person's concerns about the subject application. Further, persons with standing have the right to fully participate in the hearing. The Commission considers this to include the right to file evidence in support of their position, the right to question or cross-examine the applicant(s) on its evidence and the right to make argument.

4.2 Darren Savard and Kimberly Savard

29. Mr. and Ms. Savard own land located approximately 15 kilometres from the proposed power plant. In their respective statements of intent to participate, neither Mr. nor Ms. Savard specified the rights or interests they were asserting. However, for the purposes of this ruling, the Commission is prepared to assume that they are asserting property rights associated with their lands and their enjoyment of those lands. Mr. and Ms. Savard each expressed concerns about the project's impact on area traffic. Mr. Savard also questioned whether further power lines would be required in the area.

30. The Commission understands that the proposed power plant, if approved, would connect directly to EDTI's substation and no new transmission lines outside the project footprint would be required. In the Commission's view, this completely addresses Mr. Savard's concern regarding new transmission lines associated with the project.

31. Mr. and Ms. Savard's remaining concern related to the potential for increased traffic during the construction phase of the project. Having regard to the distance from their lands to the project, the existence of more than one access route to the project area and the fact that any

¹¹ AUC Decision 2011-337, Maxim Power Corp., H.R. Milner Power Plant Expansion, Application No. 1604766, Proceeding No. 203, August 10, 2011.

¹² Ibid, paragraph 20.

moderate increase in traffic related to the project would be temporary, the Commission finds that Mr. and Ms. Savard have not demonstrated, on a factual basis, that approval of the proposed project may directly and adversely affect their rights or interests.

4.3 The Strawberry landowners Group (SLAWG)

32. The distance between the lands owned or occupied by the closest SLAWG member and the proposed power plant is more than nine kilometres. The SLAWG did not specify the rights or interests that its members were asserting. However, for the purposes of this ruling, the Commission is prepared to assume that they are asserting property rights associated with their lands and their enjoyment of those lands.

33. The concerns expressed by the SLAWG focused on the project's effects on air, water, health, noise and traffic. While proximity to a project is not the only factor that the Commission will consider when reviewing an application for standing, it is an important one. Another important factor is the nature of the project itself. In this case the project, proposed to be constructed on pre-disturbed lands adjacent to an existing power plant and transmission infrastructure, does not require a new water diversion permit or a new retention pond, and is anticipated to comply with the Commission's noise requirements and Alberta's Ambient Air Quality Guidelines.

34. The Commission finds that the SLAWG's concerns regarding water quality and usage were general in nature and premised, to some degree, on a misunderstanding of the project. For example, the SLAWG expressed concern about water quality associated with the need for more water retention ponds for the project. The applicant clarified that there would be no new retention ponds associated with the project.

35. The SLAWG also expressed concern about increased water withdrawals from the North Saskatchewan River for the project. However, the SLAWG failed to explain how the increased water withdrawal may affect the rights or interests its members were asserting, given that the water withdrawals would be made under the applicant's existing water diversion approvals.

36. The SLAWG also expressed general concern about the project's effects on area groundwater and its member's water supply, but failed to explain how approval of the project may result in adverse impacts to the water supply. While the Commission's standing test does not require the SLAWG to conclusively demonstrate the potential for such an effect, it does require the SLAWG to establish a connection between the concern identified and the approval of the project. In the Commission's view, a bare assertion of a concern does not meet that test.

37. The SLAWG concerns about air quality and health effects were general and made no reference to how approval of the project may directly and adversely affect its members' rights or interests. The Commission finds that the SLAWG failed to provide a connection between the concerns expressed and construction or operation of the project, given the nature of the project and its emissions, and the distance from the project to the SLAWG members' lands.

38. Finally, the SLAWG expressed general concerns about noise and nuisance associated with construction of the project. Having regard to the distance from the SLAWG members' lands

to the project, the existence of more than one access route to the project area and the fact that any moderate increase in traffic related to the project would be temporary, the Commission finds that these general concerns do not demonstrate the potential for a direct and adverse effect.

39. In circumstances such as this, where the nearest member of the SLAWG lives more than nine kilometres from the project, it was incumbent upon the SLAWG to establish a connection between the concerns expressed and the anticipated effects associated with the proposed power plant approval. In the Commission's view, the general concerns expressed by the SLAWG members provide an insufficient basis for granting standing, especially given the nature of the project and its distance from the lands owned by SLAWG members. Accordingly, the Commission finds that the SLAWG has not demonstrated that the Commission's decision on the project application may directly and adversely affects the rights and interests of its members.

4.4 The Pembina Institute

40. The Commission understands that the Pembina Institute's application for standing is premised upon the potential impacts of the project on its members and employees that live and work in Edmonton and the surrounding areas. However, in its submissions the Pembina Institute did not specify which members or employees it was representing and did not explain or describe the rights it was asserting on their behalf.

41. In the Commission's view, the Pembina Institute provided insufficient information to allow it to rule on either part of the standing test. Specifically, it is not clear to the Commission what rights or interests the Pembina Institute is asserting or how those rights or interests may be directly affected by the Commission's decision on the project. As noted by the Alberta Court of Appeal in the Dene Tha decision, the Commission needs "some facts to go on" to determine if there is a some degree of location or connection between the work proposed and the right asserted. In this case the Pembina Institute provided neither. The Commission accordingly finds that the Pembina Institute has failed to demonstrate that it has rights or interests that may be directly and adversely affected by the Commission's decision on the application.

4.5 The Gunn Métis Local 55 (Gunn Métis)

42. The Gunn Métis explained that it represents members living in and around Gunn, Lac St. Anne, Wabamun and other Métis communities in West Central Alberta. The Gunn Métis asserted that it enjoys aboriginal rights associated with the ability to use lands and water in the project area for traditional purposes. For the purposes of this ruling, the Commission is prepared to assume that the Gunn Métis is entitled to exercise site-specific aboriginal rights in the locations that it has asserted in its submissions.

43. Some of the concerns expressed by the Gunn Métis were specific to certain areas identified in a map that its members use for traditional purposes. That map was filed confidentially in accordance with a ruling of the Commission dated May 26, 2014. Other concerns expressed by the Gunn Métis related to traditional activities that take place at Lac St. Anne, which is approximately 30 kilometres from the project site, and at Lake Wabamun, which is approximately 20 kilometres from the project site, and on the North Saskatchewan River. The Gunn Métis also expressed concerns that were more general in nature and related to

the project's potential impact to area land, water and air that it claimed would impact the exercise of its members' aboriginal rights.

44. The Commission has carefully reviewed the concerns expressed by the Gunn Métis and finds, for the reasons that follow, that it has failed to demonstrate how the rights it has asserted may be directly and adversely affected by the Commission's decision on the project.

45. An important consideration for the Commission in making its decision was the project's location in relation to the areas identified by the Gunn Métis as important for carrying out traditional activities. As noted previously, the project site is pre-disturbed and is owned by the applicant, as are the lands immediately surrounding the project site, to a distance of approximately two kilometres. The Commission also had regard for the nature of the project, including its projected compliance with Alberta's Ambient Air Quality Guidelines and that the water needs for the project can be accommodated under Capital Power's existing water licences.

46. As the Commission understands it, the Gunn Métis is not asserting the right to pursue its aboriginal harvesting rights on the lands owned by Capital Power, rather it is asserting those rights in association with lands further afield, the closest of which being the lands identified in the confidential map. Without revealing the location of those lands, the Commission can state that they are more than three kilometres from the project site. Based on the information presented by the Gunn Métis and taking into account the nature of the project, it is the Commission's view that the Gunn Métis has not demonstrated that its aboriginal rights exercised at those locations would be affected by the proposed power plant because the lands are far enough away to prevent direct and adverse effects. The same can be said for the other locations identified by the Gunn Métis as important for traditional activities, such as Lac Wabamun, Lac Ste. Anne, and the North Saskatchewan River.

47. While the Gunn Métis listed a number of general concerns about the project, it failed to demonstrate how the Commission's decision on the application may directly and adversely affect the rights it asserted at the locations identified by it as important for the carrying out of traditional activities. The Commission, therefore, finds that the Gunn Métis has not demonstrated, on a factual basis, that it may be directly and adversely affected by the construction and operation of the proposed power plant.

4.1 Conclusion

48. Based on the forgoing, the Commission is not satisfied that any party mentioned above has standing in relation to this application.

49. The Commission considers that a hearing is not required as the Commission's decision or order regarding this application will not directly and adversely affect the rights of a person pursuant to Section 9 of the *Alberta Utilities Commission Act*.

Yours truly,

<original signed by>

Anne Michaud
Panel Chair

<original signed by>

Neil Jamieson
Commission Member

<original signed by>

Patrick Brennan
Acting Commission Member